

STATEMENT OF EMERGENCY

781 KAR 1:010

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a) and is necessary to address an imminent threat to public welfare, ensure continued compliance with federal vocational rehabilitation requirements, and implement the mandates of SB 103 RS 25. The Office of Vocational Rehabilitation (OVR) is currently operating under an Order of Selection (OOS) because available resources are insufficient to serve all eligible individuals with disabilities. Under the existing regulatory framework, OVR cannot correctly assign priority categories or administer OOS in a manner consistent with 34 CFR §§ 361.36, 361.41, and 361.42. As a result, individuals with the most significant disabilities are being placed on waitlists under outdated and noncompliant criteria. Immediate regulatory correction is required to avoid continued improper prioritization and further delay in service delivery.

Immediate action is also required to prevent jeopardizing federal funding for the OVR program. Continued administration of an unlawful OOS constitutes federal noncompliance and poses a direct risk to Kentucky's ability to draw federal vocational rehabilitation funds. This creates an imminent threat to public welfare, as OVR is currently unable to serve new eligible individuals and cannot release any of the approximately 3,000 individuals now waiting for services until the regulations are corrected.

In addition, SB 103 RS 25 amended KRS 151B.195 to require OVR to promulgate administrative regulations that established a preference for in-state services and set forth its policy and procedure used to establish service fees.

Ordinary administrative regulation procedures are inadequate to prevent this harm, because the delay inherent in the ordinary process would prolong improper administration of the OOS and extend service denials for individuals with the most significant disabilities. Therefore, this emergency regulation is necessary to establish the legally required framework for OVR to comply with federal and state law and to protect public welfare.

This emergency regulation will be replaced by an ordinary administrative regulation because it is necessary for agency operations and to ensure the agency's policies are more transparent. The companion ordinary administrative regulation is identical to this emergency regulation.

Andy Beshear, Governor
Commonwealth of Kentucky

Vickie Wise, Deputy Secretary
Education and Labor Cabinet

1 EDUCATION AND LABOR CABINET

2 Department of Workforce Development

3 Office of Vocational Rehabilitation

4 (Emergency Amendment)

5 781 KAR 1:010E. Office of Vocational Rehabilitation appeal procedures.

6 RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

7 STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to

9 promulgate administrative regulations that are necessary to carry out the provisions of KRS

10 Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for

11 the review of determinations made by rehabilitation personnel for basic rehabilitation services.

12 Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions

13 relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner

14 to promulgate administrative regulations for the department. This administrative regulation

15 establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

16 Section 1. ~~Definitions.~~

17 ~~(1) "Administrative hearing" is defined by KRS 13B.010(2).~~

18 ~~(2) "Administrative review" means an informal process through which office personnel not~~
19 ~~involved in the initial decision conduct a review of an office decision to ensure the decision~~
20 ~~complies with office policy.~~

- 1 ~~(3) "Appellant" means an applicant, potentially eligible, or eligible individual who~~
2 ~~requests an appeal of an office decision in accordance with this section.~~
- 3 ~~(4) "Applicant" means an individual who submits an application for vocational~~
4 ~~rehabilitation services.~~
- 5 ~~(5) "Branch manager" means the office staff who is responsible for the operations of an~~
6 ~~office branch.~~
- 7 ~~(6) "Case record" means the official written or electronic record of the vocational~~
8 ~~rehabilitation case of an applicant, potentially eligible, or eligible individual.~~
- 9 ~~(7) "Competitive integrated employment" is defined by 34 C.F.R. 361.5(c)(9).~~
- 10 ~~(8) "Eligible individual" means an applicant for vocational rehabilitation services who~~
11 ~~the office determines is an individual with a disability who requires vocational~~
12 ~~rehabilitation services to prepare for, secure, retain, or regain employment.~~
- 13 ~~(9) "Executive director" means the Executive Director of the Office of Vocational~~
14 ~~Rehabilitation.~~
- 15 ~~(10) "Hearing officer" is an individual who meets the qualifications established in KRS~~
16 ~~13B.010(7) and who has knowledge of the laws applicable to the office.~~
- 17 ~~(11) "Office" means the Office of Vocational Rehabilitation.~~
- 18 ~~(12) "Office Appeal Form" means the office form incorporated by referenced and used~~
19 ~~by an applicant, potentially eligible, or eligible individual to request an appeal of an office~~
20 ~~decision.~~
- 21 ~~(13) "Potentially eligible individual" means an individual who might be eligible for~~
22 ~~vocational rehabilitation services, but whose eligibility has not yet been determined.~~
- 23 ~~(14) "Secretary" means the Secretary of the Education and Labor Cabinet.~~

~~Section 2.~~] Right to Appeal.

(1) The office shall notify every~~[applicant, potentially eligible individual, or eligible]~~
individual in writing:

(a) That they have~~[that the individual has]~~ the right to appeal any determination made by
the office that affects the provision, denial, reduction, suspension, or cessation of that
individual's vocational rehabilitation services;~~[-]~~

(b) That they have the right to pursue mediation, which shall be conducted by a qualified
mediator selected in accordance with 34 CFR 361.57(d);

(c) The names and addresses of individuals with whom requests for mediation or hearings
may be filed;

(d) That an impartial hearing officer shall be selected in accordance with 34 C.F.R.
361.57(e); and

(e) The availability of the client assistance program.

(2) This notice shall be provided:

(a) At the time an individual applies for vocational rehabilitation services;

(b) At the time the individual is assigned to a priority category in order of selection;

(c) At the time the individualized plan of employment is developed or amended; and

(d) Whenever vocational rehabilitation services for an individual are reduced, suspended,
or terminated.

~~[The office shall provide to every applicant, potentially eligible individual, or eligible
individual:~~

1 ~~(a) As established in the Kentucky Office of Vocational Rehabilitation Policies and~~
2 ~~Procedures Manual, the procedure for requesting an appeal, including the name and~~
3 ~~address of office staff to whom a request for appeal shall be submitted; and~~

4 ~~(b) The Office Appeal Form.]~~

5 (3) A request for appeal shall be ~~[submitted using the Office Appeal Form and shall be~~
6 ~~]submitted to the office within fourteen (14) days of receipt of written notice of an office~~
7 ~~decision[or receipt of verbal notice of an office decision, as determined by the date in the~~
8 ~~case record].~~ A timely request for appeal may be submitted via US Mail, email or
9 telephonically.

10 (4) As required by 34 CFR 370.3, an individual~~[An appellant]~~ shall have the right to be
11 represented by an advocate or attorney at all appellate proceedings, and the
12 individual~~[appellant]~~ shall bear all cost for representation.

13 (5) Upon receipt of an appeal~~[a request for an administrative hearing]~~, the office shall:

14 (a) Conduct an informal administrative review of the decision on appeal;~~[prior to the~~
15 ~~administrative hearing; and]~~

16 (b) Offer the individual an opportunity to participate in mediation if the individual
17 disagrees with the findings of the informal administrative review; and

18 (c)[(b)] If the matter is not resolved through the administrative review or mediation,
19 convene~~[Convene]~~ an administrative hearing within sixty (60) days, except that an~~[a time]~~
20 extension, not to exceed one (1) year, shall be granted upon agreement by both parties.

21 (6) During an appeal, the office shall not suspend, reduce, or terminate services provided
22 under the individualized plan for employment unless:

23 (a) It has evidence that the service was obtained through:

1 1. Misrepresentation;

2 2. Fraud;

3 3. Collusion; or

4 4. Criminal conduct; or

5 (b) The individual[~~appellant~~] requests the action.

6 Section 2[3]. Informal Administrative Review.

7 (1) Upon receipt of an appeal[~~a notice of appeal, the office shall conduct an informal~~
8 ~~administrative review of the decision.~~

9 (~~2~~) ~~The director or designee shall select~~ a branch manager not involved in the
10 decision[~~action~~] in question [~~who~~]shall conduct the administrative review of the decision
11 within ten (10) days.

12 (~~2~~)[~~(3)~~] The administrative review shall be conducted either in person or by teleconference,
13 and the individual[~~appellant~~] shall be invited to participate.

14 (~~3~~)[~~(4)~~] A written determination shall be sent to the individual[~~The branch manager shall~~
15 ~~issue a written a determination~~] within five (5) business days [~~and notify the appellant~~] via
16 electronic mail or U.S. Mail.

17 Section 3[4]. Mediation.

18 (1) The individual[~~appellant~~] shall have the right to participate in mediation before an
19 administrative hearing is convened.

20 (~~2~~) [~~The office shall maintain a list of qualified mediators.~~

21 (~~3~~)]If mediation is requested, the office shall:

22 (a) Schedule[~~Choose a mediator from the list and schedule~~] the mediation for a date prior
23 to an administrative hearing;

1 (b) Convene the mediation in a location convenient to the office and the individual, if in
2 person, or virtually,~~[appellant]~~ and provide reasonable accommodations if requested;

3 (c) Bear the cost of mediation; and

4 (d) Send a representative of the office to the mediation who is authorized to bind the office
5 to an agreement.

6 ~~(3)~~~~(4)~~ The individual~~[appellant]~~ shall attend the mediation.

7 ~~(4)~~~~(5)~~ Discussions or agreements arising from the mediation shall be confidential and
8 shall not be used as evidence in any subsequent administrative hearing or civil proceeding.

9 ~~(5)~~~~(6)~~ An agreement reached by the parties through mediation shall be documented in
10 writing and~~[,]~~ signed by both parties~~[prior to the conclusion of the mediation, and a copy~~
11 ~~shall be issued to both parties]~~.

12 (6) Mediation is voluntary and shall not be used to delay the scheduling of an impartial
13 hearing.

14 Section 4~~[5]~~. Administrative Hearing. If the individual is not satisfied with the outcome of
15 the informal administrative review process, did not choose to participate in mediation or if
16 the mediation was unsuccessful, the~~[applicant, potentially eligible, or eligible, The]~~ office
17 shall conduct an administrative hearing in accordance with KRS Chapter 13B.~~[and Section~~
18 ~~2 of this administrative regulation if the elects not to participate in mediation or if the~~
19 ~~mediation did not result in an agreement.~~

20 ~~Section 6. Client Assistance Program. The office shall advise an applicant, potentially~~
21 ~~eligible individual, or eligible individual of:~~

22 (1) ~~The existence of the Client Assistance Program;~~

23 (2) ~~The services provided by the program; and~~

1 ~~(3) How to contact a program representative.~~

2 ~~Section 7. Findings and Decision.~~

3 ~~(1) The hearing officer shall issue a recommended order in accordance with KRS~~
4 ~~13B.110.~~

5 ~~(2) Either party shall have the right to submit exceptions to the recommended order to the~~
6 ~~secretary as established in KRS 13B.110.~~

7 ~~(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120.~~

8 ~~Section 8. Incorporation by Reference.~~

9 ~~(1) "Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual", June~~
10 ~~2022, is incorporated by reference.~~

11 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright~~
12 ~~law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort,~~
13 ~~Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

14 ~~(3) This material is also available at kec.ky.gov/vocational-rehabilitation.]~~

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As approved by:

Vickie Wise, Deputy Secretary, Education and Labor Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on February 26, 2026 at 1:00 pm, at Mayo-Underwood Hearing Room 133CE, 500 Mero Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2026. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601, 502-782-2539, brooke.mcdaniel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

781 KAR 1:010E: Office of Vocational Rehabilitation appeal procedures.

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

Subject Headings: Administrative Hearings, Disability and Disabilities, Workforce Development

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Office of Vocational Rehabilitation's mediation and administrative hearing process as required by 29 U.S.C. § 722 and KRS 13B.

(b) The necessity of this administrative regulation: Changes to the regulation are needed to ensure individuals who apply for and receive vocational rehabilitation services understand their right to appeal a decision made by the Office and the administrative appeal process required to comply with 29 U.S.C. § 722 and KRS 13B

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments are made to provide a better understanding to individuals who apply for and receive vocational rehabilitation services about their due process rights as set forth in 29 U.S.C. § 722 and KRS 13B.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulation are needed to ensure individuals who apply for and receive vocational rehabilitation services understand their right to appeal a decision made by the Office of Vocational Rehabilitation and the administrative appeal process required to comply with 29 U.S.C. § 722 This administrative

regulation provides information necessary for the Office of Vocational Rehabilitation to provide mediation and impartial due process rights as required by 29 U.S.C. § 722 and KRS 13B.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by outlining the requirements for the mediation and administrative hearing process required by 29 U.S.C. § 722 and KRS 13B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific information to individuals who apply for and receive vocational rehabilitation services about their federally guaranteed due process rights and the procedures used by the Office of Vocational Rehabilitation to ensure compliance with the due process requirements of 29 U.S.C. § 722 and KRS 13B.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? No.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The approximately 46,000 individuals served by the Office of Vocational Rehabilitation.

(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment: No person or entity is required to take action as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): There is no cost associated with this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): The regulated individuals will have a better understanding of their due process rights under state and federal law.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment: Federal vocational rehabilitation funds received by the Office of Vocational Rehabilitation and the required state match funds; however, there are no additional costs as a result of this proposed amendment.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this proposed amendment.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This proposed amendment does not establish fees or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied? Tiering is not required in this administrative regulation because it applies equally to all individuals who appeal a decision made by the Office of Vocational Rehabilitation.

FISCAL IMPACT STATEMENT

781 KAR 1:010E: Office of Vocational Rehabilitation appeal procedures.

Contact Person: Brooke McDaniel, Administrative Specialist Senior, Office of Vocational Rehabilitation, 500 Mero Street, First Floor, Frankfort, KY 40601

Phone: 502-782-2539

Email: brooke.mcdaniel@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: 29 U.S.C. § 722, KRS 13B.170 and KRS 151B.195(1).

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 13B.170 and KRS 151B.195(1).

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: The Office of Vocational Rehabilitation is the promulgating agency, and no other agencies are affected.

(b) Estimate the following for each affected state unit part, or division identified in (3)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:
For the first year: None
For subsequent years: None

(4)(a) Identify affected local entities (for example; cities, counties, fire departments, school districts): No local entities are affected.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:

For the first year: None
For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
For the first year: None
For subsequent years: None
2. Revenues:
For the first year: None
For subsequent years: None
3. Cost Savings:
For the first year: None
For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a) and (5)(a):
Not applicable.

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to reach this conclusion: Not applicable.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact,” as defined by KRS 13A.010(13): This proposed amendment will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: Not applicable.